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November 1, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Via Electronic Filing

Re: *Sponsorship Identification Rules and Embedded Advertising*, MB Docket 08-90;
Auction 91 FM Broadcast Construction Permits, AU Dkt 10-183;
Ways to Further Section 257 Mandate¸ MB Dkt 04-228
Promoting Diversification of Ownership in the Broadcast Services, MB Dkt 07-294;
Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees, MB Docket 10-56

Dear Ms. Dortch,

Pursuant to section 1.1206(b) of the Commission's rules, Free Press submits this notice regarding an *ex parte* communication in the above referenced dockets.

On November1, 2010, Corie Wright and Joel Kelsey of Free Press met with Krista Witanowski, Acting Legal Advisor on Media issues to Commissioner Meredith Attwell Baker. In the meeting, Ms. Wright and Mr. Kelsey discussed the following issues:

Video News Releases and the FCC Sponsorship Identification Rules:
Free Press expressed concern over reports of the growing use of undisclosed commercials in television newscasts[1] in violation of the Commission's sponsorship identification rules. Additionally, we explained that even where local stations technically may be abiding by the FCC sponsorship identification rules, the public still may not realize they are watching commercial content because most broadcasters relegate sponsorship identification disclosures to a minuscule, fast moving scroll at the end of the program credits. To address these problems, the FCC should (1) launch an investigation into these new instances of covert commercials in news programs to determine whether these stations have violated the Commission's sponsorship identification rules, and (2) re-open the Commission's extant proceeding on sponsorship identification rules and promulgate

[1] *See Free Press Letter to Chairman Genachowski Regarding Possible Sponsorship Identification Violations*, filed MB Dkt. 08-90 (Sept. 27, 2010) (citing recent *Los Angeles Times* reports of the increasing use of undisclosed commercial material in news programming).

rules requiring stricter and more prominent disclosure so that viewers can distinguish between *bona fide* news and commercial content. [2]

FCC Auctions and the New Entrant Bidding Credit
Free Press explained that loopholes in the FCC's New Entrant Bidding Credit ("bidding credit") allow large, well-financed corporations to edge-out new entrants and small businesses in broadcast spectrum auctions. The bidding credit, which was adopted in 1998 in an attempt reduce barriers to entry for new entrants, subsidizes the cost of a winning bid for broadcast licenses by awarding a 35% price reduction for auction participants with no interests in any other "media of mass communications," and 25% for those who have interests in three or fewer. However, the credit has been implemented in such a way that allows corporations to sell-off media holdings shortly before an auction and use the proceeds of the sale to participate in auctions as a heavily capitalized "new" entrant. Additionally, because the discount applies to every license purchased in a single auction, deep-pocketed bidders can edge-out genuine new entrants while getting steep discounts for buying broadcast licenses in bulk. Free Press explained the need to eliminate these loopholes to prevent the credit from being exploited by well-financed incumbents to the detriment of small businesses and individuals from underrepresented groups, such as women and people of color. We also urged a comprehensive review of how the bidding credit has been utilized and whether it has been effective at lowering barriers to entry for small businesses and underrepresented groups.

The Proposed Comcast/NBCU Merger
Ms. Wright and Mr. Kelsey presented Free Press' concerns with the proposed acquisition of NBC-Universal by Comcast Corp. Consistent with an October 20, 2010 letter that Free Press sent to Chairman Genachowski on the recent Cablevision/Fox retransmission consent dispute, we discussed how a Comcast-controlled NBCU has greater incentives than a stand-alone broadcaster to raise retransmission consent rates for competing pay-TV service providers, leading to higher bills for consumers who subscribe to rival services.[3] This would give Comcast an anticompetitive advantage over small cable operators, satellite television providers such as Dish Network and DirecTV, and telco TV services such as Verizon FiOS or AT&T U-Verse. Additionally, in the event that such disputes reach an impasse, Comcast would have a strong motive to pull NBC programming from cable and online platforms in an attempt siphon off competing MVPD providers' customers.

We also highlighted similar concerns regarding Comcast's incentive and ability to withhold NBC programming from emerging online video providers. As a stand alone programmer, NBCU has incentives to make its content more widely available online. However, as a Comcast subsidiary, it would have an incentive to withhold its programming from providers that compete with Comcast's own online video and traditional cable offerings.

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[2] *Sponsorship Identification Rules and Embedded Advertising,* Notice of Inquiry and Notice of Proposed Rulemaking, MB Docket No. 08-90, 23 FCC Rcd 10682 (2008).

[3] *See Free Press Letter to Chairman Genachowski Regarding the Cablevision/Fox Retransmission Consent Dispute and Its Implications for the Proposed Comcast/NBCU Merger*, filed MB Dkt 10-56 (Oct. 20, 2010).

In accordance with the Commission's rules, this *ex parte* notice is being filed electronically in the above referenced docket. If you have any questions regarding this filing please do not hesitate to contact me.

Respectfully
submitted,

Coriell S. Wright

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